

MONTANA LEGISLATIVE HISTORY

Chapter 143 ~~14~~ 2001

Bill H 143 S _____

Original bill & history ✓ c

H. Committee on Taxation

Hearing Date(s) 1-12 ✓ c

2-13 ✓ c

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_____ c

Date Out _____ c

S. Committee on Taxation

Hearing Date(s) 3-7 ✓ c

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Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

Bill Actions - Current Bill Progress: Became Law**Bill Action Count:** 50

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	03/29/2001			
(H) Signed by Governor	03/29/2001			
(H) Transmitted to Governor	03/19/2001			
(S) Signed by President	03/19/2001			
(H) Signed by Speaker	03/14/2001			
(H) Returned from Enrolling	03/14/2001			
(C) Sent to Printing	03/14/2001			
(H) Sent to Enrolling	03/14/2001			
(S) Returned to House	03/13/2001			
(S) 3rd Reading Concurred	03/13/2001	49	1	
(S) Scheduled for 3rd Reading	03/13/2001			
(S) 2nd Reading Concurred on Voice Vote	03/12/2001	48	1	
(S) Scheduled for 2nd Reading	03/12/2001			
(S) 2nd Reading Passed Consideration	03/10/2001			
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(S) Scheduled for 2nd Reading	03/09/2001			
(S) Committee Report--Bill Concurred	03/07/2001			(S) Taxation
(S) Committee Executive Action--Bill Concurred	03/07/2001	9	0	(S) Taxation
(S) Hearing	03/07/2001			(S) Taxation
(S) Referred to Committee	02/28/2001			(S) Taxation
(S) First Reading	02/28/2001			
(H) Transmitted to Senate	02/20/2001			
(H) 3rd Reading Passed	02/20/2001	71	29	
(H) 2nd Reading Passed	02/19/2001	71	29	
(H) Scheduled for 2nd Reading	02/19/2001			
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(H) Committee Report--Bill Passed as Amended	02/13/2001			(H) Taxation
(H) Committee Executive Action--Bill Passed as Amended	02/13/2001	15	5	(H) Taxation
(H) Hearing	01/12/2001			(H) Taxation
(H) Fiscal Note Printed	01/09/2001			
(H) Fiscal Note Received	01/09/2001			
(H) Rereferred to Committee	01/04/2001			(H) Taxation

(H) First Reading	01/03/2001			
(H) Referred to Committee	12/28/2000			(H) Business and Labor
(H) Fiscal Note Requested	12/26/2000			
(C) Introduced Bill Text Available Electronically	12/22/2000			
(H) Introduced	12/22/2000			
(C) Pre-Introduction Letter Sent	12/21/2000			
(C) Draft in Assembly/Executive Director Review	12/21/2000			
(C) Draft in Final Drafter Review	12/20/2000			
(C) Bill Draft Text Available Electronically	12/20/2000			
(C) Draft in Input/Proofing	12/19/2000			
(C) Draft to Drafter - Edit Review [CMD]	12/19/2000			
(C) Draft in Edit	12/18/2000			
(C) Draft in Legal Review	12/18/2000			
(C) Draft to Requester for Review	12/11/2000			
(C) Draft Taken Off Hold	12/11/2000			
(C) Draft On Hold	11/08/2000			
(C) Fiscal Note Needed	10/03/2000			
(C) Draft Request Received	10/03/2000			

HOUSE BILL NO. 143
INTRODUCED BY R. SOMERVILLE
BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND CLARIFYING THE REPORTING OF S. CORPORATION, PARTNERSHIP, LIMITED LIABILITY COMPANY, AND OTHER PASS-THROUGH ENTITY INCOME; DEFINING MONTANA SOURCE INCOME FOR THE PURPOSES OF INDIVIDUAL INCOME TAXES; PROVIDING FOR COMPOSITE RETURNS AND BACKUP WITHHOLDING FOR NONRESIDENTS; PROVIDING A PENALTY FOR A PASS-THROUGH ENTITY'S FAILURE TO FILE INFORMATION RETURNS; PROVIDING A RESIDENT SHAREHOLDER CREDIT FOR CERTAIN STATE TAXES PAID BY AN S. CORPORATION; CLARIFYING THAT SHELL AND PASSIVE PASS-THROUGH ENTITIES DO NOT QUALIFY FOR THE QUALIFIED ENDOWMENT CREDIT; AMENDING SECTIONS 13-37-218, 15-30-101, 15-30-105, 15-30-133, 15-30-241, 15-31-101, 15-31-162, 15-31-201, AND 15-31-603, MCA; REPEALING SECTIONS 15-31-202 AND 15-31-209, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 13-37-218, MCA, is amended to read:

"13-37-218. Limitations on receipts from political committees. A candidate for the state senate may receive no more than \$1,000 in total combined monetary contributions from all political committees contributing to ~~his~~ the candidate's campaign, and a candidate for the state house of representatives may receive no more than \$600 in total combined monetary contributions from all political committees contributing to ~~his~~ the candidate's campaign. The ~~foregoing~~ limitations ~~shall in this section must~~ be multiplied by the inflation factor as defined in 15-30-101~~(8)~~ for the year in which general elections are held ~~after 1984; the~~ The resulting figure ~~shall~~ must be rounded off to the nearest \$50 increment. The commissioner of political practices shall publish the revised limitations as a rule. In-kind contributions must be included in computing these limitation totals. The limitation provided in this section does not apply to contributions made by a political party eligible for a primary election under 13-10-601."

Section 2. Section 15-30-101, MCA, is amended to read:

"15-30-101. Definitions. For the purpose of this chapter, unless otherwise required by the context,

the following definitions apply:

(1) "Base year structure" means the following elements of the income tax structure:

(a) the tax brackets established in 15-30-103, but unadjusted by 15-30-103(2), in effect on June 30 of the taxable year;

(b) the exemptions contained in 15-30-112, but unadjusted by 15-30-112(6), in effect on June 30 of the taxable year;

(c) the maximum standard deduction provided in 15-30-122, but unadjusted by 15-30-122(2), in effect on June 30 of the taxable year.

(2) "Consumer price index" means the consumer price index, United States city average, for all items, using the 1967 base of 100 as published by the bureau of labor statistics of the U.S. department of labor.

(3) "Corporation" or "C. corporation" means a corporation, limited liability company, or other entity:

(a) that is treated as an association for federal income tax purposes;

(b) for which a valid election under section 1362 of the Internal Revenue Code (26 U.S.C. 1362) is not in effect; and

(c) whose separate existence is not disregarded for federal income tax purposes.

~~(3)~~(4) "Department" means the department of revenue.

~~(4)~~(5) "Dividend" means:

(a) any distribution made by a C. corporation out of its earnings or and profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, other than stock dividends; and

(b) any distribution made by an S. corporation treated as a dividend for federal income tax purposes.

~~(5)~~(6) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

~~(6)~~(7) "Foreign government" means any jurisdiction other than the one embraced within the United States, its territories, and its possessions.

~~(7)~~(8) "Gross income" means the taxpayer's gross income for federal income tax purposes as defined in section 61 of the Internal Revenue Code ~~of 1954~~ (26 U.S.C. 61) or as that section may be labeled or amended, excluding unemployment compensation included in federal gross income under the

provisions of section 85 of the Internal Revenue Code ~~of 1954~~ (26 U.S.C. 85) as amended.

~~(8)~~(9) "Inflation factor" means a number determined for each ~~taxable tax~~ year by dividing the consumer price index for June of the ~~taxable tax~~ year by the consumer price index for June 1980.

~~(9)~~(10) "Information agents" includes all individuals, ~~corporations, associations, and partnerships,~~ and entities acting in whatever capacity, including lessees or mortgagors of real or personal property, fiduciaries, brokers, real estate brokers, employers, and all officers and employees of the state or of any municipal corporation or political subdivision of the state, having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income with respect to which any person or fiduciary is taxable under this chapter.

(11) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, or as it may be labeled or further amended. References to specific provisions of the Internal Revenue Code mean those provisions as they may be otherwise labeled or further amended.

~~(10)~~(12) "Knowingly" is as defined in 45-2-101.

(13) "Limited liability company" means a limited liability company, domestic limited liability company, or a foreign limited liability company as defined in 35-8-102.

(14) "Limited liability partnership" means a limited liability partnership as defined in 35-10-102.

~~(11)~~(15) ~~"Montana lottery"~~ "Lottery winnings" means income paid either in lump sum or in ~~annual~~ periodic payments to:

- (a) a resident taxpayer on a lottery ticket; or
- (b) a nonresident taxpayer on a lottery ticket purchased in Montana.

(16) (a) "Montana source income" means:

(i) wages, salary, tips, and other compensation for services performed in the state or while a resident of the state;

(ii) gain attributable to the sale or other transfer of tangible property located in the state, sold or otherwise transferred while a resident of the state, or used or held in connection with a trade, business, or occupation carried on in the state;

(iii) gain attributable to the sale or other transfer of intangible property received or accrued while a resident of the state;

(iv) interest received or accrued while a resident of the state or from an installment sale of real property or tangible commercial or business personal property located in the state;

(v) dividends received or accrued while a resident of the state;

(vi) net income or loss derived from a trade, business, profession, or occupation carried on in the state or while a resident of the state;

(vii) net income or loss derived from farming activities carried on in the state or while a resident of the state;

(viii) net rents from real property and tangible personal property located in the state or received or accrued while a resident of the state;

(ix) net royalties from real property and from tangible real property to the extent the property is used in the state or the net royalties are received or accrued while a resident of the state. The extent of use in the state is determined by multiplying the royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the royalty period in the tax year and the denominator of which is the number of days of physical location of the property everywhere during all royalty periods in the tax year. If the physical location is unknown or unascertainable by the taxpayer, the property is considered used in the state in which it was located at the time the person paying the royalty obtained possession.

(x) patent royalties to the extent the person paying them employs the patent in production, fabrication, manufacturing, or other processing in the state, a patented product is produced in the state, or the royalties are received or accrued while a resident of the state;

(xi) net copyright royalties to the extent printing or other publication originates in the state or the royalties are received or accrued while a resident of the state;

(xii) partnership income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:

(A) derived from a trade, business, occupation, or profession carried on in the state;

(B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of property located in the state; or

(C) taken into account while a resident of the state;

(xiii) an S. corporation's separately and nonseparately stated income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:

(A) derived from a trade, business, occupation, or profession carried on in the state;

(B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of property located in the state; or

(C) taken into account while a resident of the state;

(xiv) income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit of an estate or trust with nexus with the state;

(xv) social security benefits received or accrued while a resident of the state;

(xvi) taxable individual retirement account distributions, annuities, pensions, and other retirement benefits received while a resident of the state; and

(xvii) any other income attributable to the state, including but not limited to lottery winnings, state and federal tax refunds, nonemployee compensation, recapture of tax benefits, and capital loss addbacks.

(b) The term does not include:

(i) compensation for military service of members of the armed services of the United States who are not Montana residents and who are residing in Montana solely by reason of compliance with military orders and does not include income derived from their personal property located in the state except with respect to personal property used in or arising from a trade or business carried on in Montana; or

(ii) interest paid on loans held by out-of-state financial institutions recognized as such in the state of their domicile, secured by mortgages, trust indentures, or other security interests on real or personal property located in the state, if the loan is originated by a lender doing business in Montana and assigned out-of-state and there is no activity conducted by the out-of-state lender in Montana except periodic inspection of the security.

~~(12)~~(17) "Net income" means the adjusted gross income of a taxpayer less the deductions allowed by this chapter.

(18) "Nonresident" means a natural person who is not a resident.

~~(13)~~(19) "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued or paid or incurred, and the terms "paid or accrued" and "paid or incurred" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

(20) "Partner" means a member of a partnership or a manager or member of any other entity, if treated as a partner for federal income tax purposes.

(21) "Partnership" means a general or limited partnership, limited liability partnership, limited liability company, or other entity, if treated as a partnership for federal income tax purposes.

(22) "Pass-through entity" means a partnership, an S. corporation, or an entity whose existence is disregarded for federal income tax purposes.

~~(14)~~(23) "Pension and annuity income" means:

(a) systematic payments of a definitely determinable amount from a qualified pension plan, as that term is used in section 401 of the Internal Revenue Code (26 U.S.C. 401), or systematic payments received as the result of contributions made to a qualified pension plan that are paid to the recipient or recipient's beneficiary upon the cessation of employment;

(b) payments received as the result of past service and cessation of employment in the uniformed services of the United States;

(c) lump-sum distributions from pension or profit-sharing plans to the extent that the distributions are included in federal adjusted gross income;

(d) distributions from individual retirement, deferred compensation, and self-employed retirement plans recognized under sections 401 through 408 of the Internal Revenue Code (26 U.S.C. 401 through 408) to the extent that the distributions are not considered to be premature distributions for federal income tax purposes; or

(e) amounts received from fully matured, privately purchased annuity contracts after cessation of regular employment.

~~(15)~~(24) "Purposely" is as defined in 45-2-101.

~~(16)~~(25) "Received", for the purpose of computation of taxable income under this chapter, means received or accrued, and the term "received or accrued" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

~~(17)~~(26) "Resident" applies only to natural persons and includes, for the purpose of determining liability to the tax imposed by this chapter with reference to the income of any taxable year, any person domiciled in the state of Montana and any other person who maintains a permanent place of abode within the state even though temporarily absent from the state and who has not established a residence elsewhere.

(27) "S. corporation" means an incorporated entity for which a valid election under section 1362 of the Internal Revenue Code (26 U.S.C. 1362) is in effect.

~~(18)~~(28) "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in proportion to their previous holdings.

~~(19)~~(29) "Taxable income" means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this chapter.

~~(20)~~(30) "Taxable year" or "tax year" means the taxpayer's taxable year for federal income tax

purposes.

~~(21)~~(31) "Taxpayer" includes any person, entity, or fiduciary, resident or nonresident, subject to a tax or other obligation imposed by this chapter and unless otherwise specifically provided does not include ~~corporations~~ a C. corporation."

NEW SECTION. **Section 3. Taxation of partners, shareholders, managers, and members.** (1) A partner of a partnership that has Montana source income and a resident who is a partner of a partnership during any part of the tax year shall, in computing net income, include the partner's distributive share of partnership income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit as determined pursuant to section 704 of the Internal Revenue Code (26 U.S.C. 704) and shall furnish a copy of the partner's federal schedule of the partner's share of income, deductions, and credits when filing the Montana tax return.

(2) A shareholder of an S. corporation that has Montana source income and a resident who is a shareholder of an S. corporation during any part of the tax year shall, in computing net income, include the shareholder's pro rata share of separately and nonseparately stated S. corporation income, loss, deduction, or credit as determined pursuant to sections 1366 and 1377 of the Internal Revenue Code (26 U.S.C. 1366 and 1377) and shall furnish a copy of the shareholder's federal schedule of the shareholder's share of income, deductions, and credits when filing the Montana tax return.

(3) A partner, shareholder, manager, member, or other owner of an entity that is disregarded for federal income tax purposes and has Montana source income and a resident who is a partner, shareholder, manager, member, or other owner of an entity that is disregarded for federal income tax purposes during any part of the tax year shall, in computing net income, include the disregarded entity's income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit.

NEW SECTION. **Section 4. Composite returns and tax.** (1) A partnership or S. corporation may elect to file a composite return and pay a composite tax on behalf of participants. A participant is a partner, shareholder, manager, or member who:

(a) is a nonresident individual whose only Montana source income for the tax year is from the entity and other partnerships or S. corporations electing to file the composite return and pay the composite tax on behalf of that partner, shareholder, manager, or member; and

(b) consents to be included in the filing.

(2) Each participant's composite tax liability is the product obtained by:

(a) determining the tax that would be imposed, using the rates specified in 15-30-103, on the sum obtained by subtracting the allowable standard deduction for a single individual and one exemption allowance from the participant's share of the entity's income from all sources as determined for federal income tax purposes; and

(b) multiplying that amount by the ratio of the entity's Montana source income to the entity's income from all sources for federal income tax purposes.

(3) The composite tax is the sum of each participant's composite tax liability.

(4) The electing entity:

(a) shall remit the composite tax to the department;

(b) must be responsible for any assessments of additional tax, penalties, and interest, which additional assessments must be based on the total liability reflected in the composite return;

(c) shall represent the participants in any appeals, claims for refund, hearing, or court proceeding in any matters relating to the filing of the composite return;

(d) shall make quarterly estimated tax payments as prescribed by 15-30-241; and

(e) shall retain powers of attorney executed by each participant included in the composite return, authorizing the entity to file the composite return and to act on behalf of each participant.

(5) The return must be made on forms the department prescribes and filed on or before the due date, including extensions, for filing a Montana individual income tax return.

(6) The composite tax is in lieu of the tax imposed under 15-30-103 and 15-30-105.

(7) The department may adopt rules that are necessary to implement and administer this section.

NEW SECTION. Section 5. Consent or withholding. (1) A pass-through entity required to file an information return provided in 15-30-133 that has a partner, shareholder, manager, member, or other owner who is a nonresident individual shall, on or before the due date, including extensions, for the information return:

(a) file a composite return with respect to the individual nonresident;

(b) file an agreement of the individual nonresident to:

(i) file a return in accordance with the provisions of 15-30-142;

(ii) timely pay all taxes imposed with respect to income of the pass-through entity; and

(iii) be subject to the personal jurisdiction of the state for the collection of income taxes and related

interest, penalties, and fees imposed with respect to the income of the pass-through entity; or

(c) remit an amount equal to the highest marginal tax rate in effect under 15-30-103 multiplied by the nonresident individual's share of Montana source income reflected on the pass-through entity's information return.

(2) Any amount paid by a pass-through entity with respect to a nonresident individual pursuant to subsection (1)(c) must be considered payment by the nonresident individual on account of the income tax imposed on the nonresident individual for the tax year pursuant to 15-30-105.

NEW SECTION. Section 6. Credit allowed individual resident shareholder for income taxes imposed on S. corporation by foreign state or country. (1) An individual who is a resident of this state is allowed a credit against the taxes imposed in Title 15, chapter 30, for the individual's pro rata share of income taxes imposed by and paid to another state or country by an S. corporation of which the individual is a shareholder on income taxable under Title 15, chapter 30.

(2) The credit is allowed only for taxes paid to another state or country on income derived from sources within the other state or country that is taxable under the laws of the other state or country regardless of the residence or domicile of the recipient.

(3) The credit must be computed by a formula prescribed by the department.

(4) As used in this section, "income tax" has the same meaning as provided in 15-1-601.

Section 7. Section 15-30-105, MCA, is amended to read:

"15-30-105. Tax on nonresident. (1) ~~(a) A tax on income earned in Montana is imposed upon each person not a resident of this state. The tax must be levied, collected, and paid annually at the rates specified in 15-30-103 with respect to the nonresident's entire net income. After calculating the tax imposed, the tax due and payable must be determined based upon the ratio of income earned in Montana to total income. Interest income from installment sales of real or tangible commercial or business property located in Montana is considered income earned in Montana. Income derived from Montana lottery winnings is considered income earned in Montana~~ nonresident equal to the tax computed under 15-30-103 as if the nonresident were a resident during the entire tax year, multiplied by the ratio of Montana source income to total income from all sources.

~~(b) This subsection (1) does not permit any items of income, gain, loss, deduction, expense, or credit to be counted more than once in determining the amount of Montana source income, and the~~

department may adopt rules that are reasonably necessary to prevent duplication or to provide for allocation of particular items of income, gain, loss, deduction, expense, or credit.

(2) Pursuant to the provisions of Article III, section 2, of the Multistate Tax Compact, each nonresident taxpayer required to file a return and whose only activity in Montana consists of making sales and who does not own or rent real estate or tangible personal property within Montana and whose annual gross volume of sales made in Montana during the taxable year does not exceed \$100,000 may elect to pay an income tax of 1/2 of 1% of the dollar volume of gross sales made in Montana during the taxable year. The tax is in lieu of the tax imposed under 15-30-103 and subsection (1)(a) of this section. The gross volume of sales made in Montana during the tax year must be determined according to the provisions of Article IV, sections 16 and 17, of the Multistate Tax Compact."

Section 8. Section 15-30-133, MCA, is amended to read:

"15-30-133. Income or license tax involving partnership pass-through entities -- partnership statements information returns required. (1) Individuals carrying on a business in Except as otherwise provided:

(a) a partnership shall be liable for income tax only in their individual capacity is not subject to taxes imposed in Title 15, chapter 30 or 31; There shall be included, in computing the net income of each partner, his distributive share, whether distributed or not, of the net income of the partnership for the taxable year, or if his net income for such taxable year is computed upon the basis of a period different from that upon the basis for which the net income of the partnership is computed, then there shall be included his distributive share of the net income of the partnership for any accounting period of the partnership ending within the fiscal or calendar year upon the basis of which the partner's net income is computed. Taxpayers who are members of partnerships are required by the department to furnish a copy of their federal partnership return.

(b) an S. corporation is not subject to the taxes imposed in Title 15, chapter 30 or 31; and

(c) a pass-through entity whose existence is disregarded for federal income tax purposes is not subject to the taxes imposed in Title 15, chapter 30 or 31.

(2) Except as otherwise provided, each partner of a partnership described in subsection (1)(a), each shareholder of an S. corporation described in subsection (1)(b), and each partner, shareholder, manager, member, or other owner of an entity described in subsection (1)(c) is subject to the taxes provided in Title 15, chapter 30, if an individual, and to the taxes provided in Title 15, chapter 31, if a C. corporation.

(3) If a pass-through entity is subject to federal income tax on any of its income:

(a) the amount that is Montana source income is subject to a tax at the rates provided in 15-31-121; and

(b) Montana source income is reduced by the amount of any tax imposed on the pass-through entity.

(4) (a) A partnership that has Montana source income shall on or before the 15th day of the 4th month following the close of its annual accounting period file an information return on forms prescribed by the department and a copy of its federal partnership return. The return must include:

(i) the name, address, and social security or federal identification number of each partner;

(ii) the partnership's Montana source income;

(iii) each partner's distributive share of Montana source income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit;

(iv) each partner's distributive share of income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit from all sources; and

(v) any other information the department prescribes.

(b) An S. corporation that has Montana source income shall on or before the 15th day of the 3rd month following the close of its annual accounting period file an information return on forms prescribed by the department and a copy of its federal S. corporation return. The return must include:

(i) the name, address, and social security or federal identification number of each shareholder;

(ii) the S. corporation's Montana source income and each shareholder's pro rata share of separately and nonseparately stated Montana source income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit;

(iii) each shareholder's pro rata share of separately and nonseparately stated income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit from all sources; and

(iv) any other information the department prescribes.

(c) An entity whose existence is disregarded for federal income tax purposes that has Montana source income shall furnish the information and file the returns the department prescribes. The return must include:

(i) the name, address, and social security or federal identification number of each manager, member, or other owner during the tax year;

(ii) the entity's Montana source income; and

(iii) any other information the department prescribes.

(d) A pass-through entity that fails to file an information return required by this section by the due date, including any extension, must be assessed a late filing penalty of \$50 multiplied by the number of the entity's partners, shareholders, managers, members, or other owners at the close of the tax year."

Section 9. Section 15-30-241, MCA, is amended to read:

"15-30-241. Estimated tax -- payment -- exceptions -- interest. (1) (a) Each individual subject to tax under this chapter, except farmers or ranchers as defined in subsection (6), shall pay for the tax year, through employer withholding, as provided in 15-30-202, through payment of estimated tax in four installments, as provided in subsection (2) of this section, or through a combination of employer withholding and estimated tax payments, at least:

(i) 90% of the tax for the current tax year, less tax credits and withholding allowed the taxpayer;
or

(ii) an amount equal to 100% of the individual's tax liability for the preceding tax year, if the preceding tax year was a period of 12 months and if the individual filed a return for the tax year.

(b) Payment of estimated taxes under this section is not required if:

(i) the combined tax liability of employer withholding and estimated tax for the current year is less than \$500 after reductions for credits and withholding;

(ii) the individual did not have any tax liability for the preceding tax year, which was a tax year of 12 months, and if the individual was a citizen or resident of the United States throughout that tax year;

(iii) the underpayment was caused by reason of casualty, disaster, or other unusual circumstances that the department determines to constitute good cause; or

(iv) the individual retired in the tax year after having attained the age of 62 or if the individual became disabled in the tax year. In addition, payment of estimated taxes under this section is not required in the tax year following the tax year in which the individual retired or became disabled.

(2) Estimated taxes must be paid in four installments according to one of the following schedules:

(a) For each taxpayer whose tax year begins on January 1, estimated tax payments are due on the following dates:

Installment	Date
First	April 15
Second	June 15

Third	September 15
Fourth	January 15 of the following tax year

(b) For each taxpayer whose tax year begins on a date other than January 1, estimated tax payments are due on the following dates:

Installment	Date
First	15th day of the 4th month following the beginning of the tax year
Second	15th day of the 6th month following the beginning of the tax year
Third	15th day of the 9th month following the beginning of the tax year
Fourth	15th day of the month following the close of the tax year

(3) (a) Except as provided in subsection (4), each installment must be 25% of the required annual payment determined pursuant to subsection (1). If the taxpayer's tax situation changes, each succeeding installment must be proportionally changed so that the balance of the required annual payment is paid in equal installments over the remaining period of time.

(b) If the taxpayer's tax situation changes after the date for the first installment or any subsequent installment, as specified in subsection (2)(a) or (2)(b), so that the taxpayer is required to pay estimated taxes, the taxpayer shall pay 25% for each succeeding installment except for the first one in which a payment is required. For estimated taxes required to be paid beginning with the second installment provided for in subsection (2)(a) or (2)(b), the taxpayer shall pay 50% for that installment and 25% for the third and fourth installments, respectively. For estimated taxes required to be paid beginning with the third installment provided for in subsection (2)(a) or (2)(b), the taxpayer shall pay 75% for that installment and 25% for the fourth installment.

(4) (a) If for any required installment the taxpayer determines that the installment payment is less than the amount determined under subsection (3)(a), the lower amount may be paid as an annualized income installment.

(b) For any required installment, the annualized income installment is the applicable percentage described in subsection (4)(c) applied to the tax computed on the basis of annualized taxable income in the tax year for the months ending before the due date for the installment less the total amount of any prior

required installments for the tax year.

(c) For the purposes of this subsection (4), the applicable percentage is determined according to the following schedule:

Required Installment	Applicable Percentage
First	22.5%
Second	45%
Third	67.5%
Fourth	90%

(d) A reduction in a required installment resulting from the application of an annualized income installment must be recaptured by increasing the amount of the next required installment, determined under subsection (3)(a), by the amount of the reduction. Any subsequent installment must be increased by the amount of the reduction until the amount has been recaptured.

(5) (a) If an estimated tax, an employer withholding tax, or a combination of estimated tax and employer withholding tax is underpaid, there must be added to the amount due under this chapter interest equal to 12% a year on the amount of the underpayment. The interest is computed on the amount of the underpayment, as determined in subsection (5)(b), for the period from the time the payment was due to the date payment was made or to the 15th day of the 4th month of the year following the tax year in which the payment was to be made, whichever is earlier.

(b) For the purpose of determining the amount of interest due in subsection (5)(a), the amount of the underpayment is the required installment amount less the installment amount paid, if any, on or before the due date for the installment.

(c) For the purpose of determining the amount of interest due in subsection (5)(a), an estimated payment must be credited against unpaid required installments in the order in which those installments are required to be paid.

(d) For each married taxpayer filing separately on the same form, the interest provided for in subsection (5)(a) must be computed on the combined tax liability after reductions for credits and withholding, as shown on the taxpayer's return.

(e) Interest may not be charged with respect to any underpayment of the fourth installment of estimated taxes if:

- (i) the taxpayer pays in full the amount computed on the return as payable; and
- (ii) the taxpayer files a return on or before the last day of the month following the close of the tax

year referred to in subsection (2)(a) or (2)(b).

(6) For the purposes of this section, "farmer or rancher" means a taxpayer who derives at least 66 2/3% of the taxpayer's gross income, as defined in 15-30-101(7), from farming or ranching operations, or both.

(7) The department shall promulgate rules governing reasonable extensions of time for paying the estimated tax. An extension may not be for more than 6 months."

Section 10. Section 15-31-101, MCA, is amended to read:

"15-31-101. Organizations subject to tax. (1) The term "corporation" includes ~~associations~~ an association, joint-stock ~~companies~~ company, common-law ~~trusts and trust or business trusts~~ trust ~~which do that does~~ business in an organized capacity, ~~and~~ all other corporations whether created, organized, or existing under and pursuant to the laws, agreements, or declarations of trust of any state, country, or the United States, ~~and any limited liability company, limited liability partnership, partnership, or other entity that is treated as an association whose separate existence is not disregarded for federal income tax purposes.~~

(2) The terms "engaged in business" and "doing business" both mean actively engaging in any transaction for the purpose of financial or pecuniary gain or profit.

(3) Except as provided in 15-31-103 or 33-2-705(4) or as may be otherwise specifically provided, every corporation engaged in business in the state of Montana shall annually pay to the state treasurer as a license fee for the privilege of carrying on business in this state the percentage or percentages of its total net income for the preceding taxable year at the rate set forth in this chapter. In the case of corporations having income from business activity which is taxable both within and outside of this state, the license fee must be measured by the net income derived from or attributable to Montana sources as determined under part 3. Except as provided in 15-31-502, this tax is due and payable on the 15th day of the 5th month following the close of the taxable year of the corporation. However, the tax becomes a lien as provided in this chapter on the last day of the taxable year in which the income was earned and is for the privilege of carrying on business in this state for the taxable year in which the income was earned.

(4) Every bank organized under the laws of the state of Montana, of any other state, or of the United States and every savings and loan association organized under the laws of this state or of the United States is subject to the Montana corporation license tax provided for under this chapter. A foreign capital depository chartered under the laws of Montana is not subject to the Montana corporation license tax provided for under this chapter until October 1, 2012. For taxable years beginning on and after January

1, 1972, this subsection is effective in accordance with Public Law 91-156, section 2 (12 U.S.C. 548)."

Section 11. Section 15-31-162, MCA, is amended to read:

"15-31-162. (Temporary) Small business corporation, partnership, and limited liability company credit for contribution to qualified endowment. A contribution to a qualified endowment, as defined in 15-30-165, by a small business corporation, as defined in 15-31-201, a partnership, or a limited liability company, as defined in 35-8-102, if engaged in business qualifies for the credit provided in 15-31-161. The credit must be attributed to shareholders, partners, or members or managers of a limited liability company in the same proportion used to report the corporation's, partnership's, or limited liability company's income or loss for Montana income tax purposes. The maximum credit that a shareholder of a small business corporation, a partner of a partnership, or a member or manager of a limited liability company may claim in a year is \$10,000, subject to the limitations in 15-30-166(2). The credit allowed under this section may not exceed the taxpayer's income tax liability. There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied to the tax year in which the contribution is made. (Terminates December 31, 2001--sec. 9, Ch. 537, L. 1997.)"

Section 12. Section 15-31-201, MCA, is amended to read:

"15-31-201. Definition of "small business corporation". (1) Except as provided in subsection (2), the term "small business corporation" is synonymous with "S. corporation" as defined in 15-30-101 and means a corporation that has made a valid election under subchapter S. of Chapter 1 of the Internal Revenue Code for which a valid election under section 1362 of the Internal Revenue Code (26 U.S.C. 1362) is in effect. ~~A small business corporation shall attach a copy of the approved federal election with the Montana return filed for the first taxable year the federal election is effective.~~

(2) A corporation that would otherwise be a small business corporation may continue to be subject to the taxes imposed by Title 15, chapter 31, if all of the following conditions are met:

(a) on December 31, 1991, the corporation was doing business in Montana and had a valid subchapter S. corporation election but had not elected to be taxed as a Montana small business corporation;

(b) after December 31, 1991, the corporation has not filed as a Montana small business corporation; and

(c) the corporation files a corporate license tax return, as required by 15-31-111, reporting all

income or loss as determined under Title 15, chapter 31, and attaches a copy of the federal subchapter S. corporate tax return."

Section 13. Section 15-31-603, MCA, is amended to read:

"**15-31-603. List of ~~corporations~~ entities furnished by secretary of state.** The On or before December 31 of each year, the secretary of state shall direct a list of all corporations, limited partnerships, limited liability companies, and limited liability partnerships, foreign and domestic, subject to the terms of Title 35, ~~chapter~~ chapters 1, 4, 5, 8, 9, 10, and 12, to the department of revenue. The list ~~shall~~ must include the following information:

- (1) the name of the ~~corporation~~ entity;
- (2) the principal office of the ~~corporation~~ entity;
- (3) the name and address of the registered agent of the ~~corporation~~ entity in Montana, if applicable; and
- (4) ~~such~~ other information ~~as~~ that the director of the department of revenue may require."

NEW SECTION. Section 14. Pass-through entity committee -- membership -- purpose. (1) There is an interim pass-through entity committee composed of eight members. The members must include:

- (a) two members from the house of representatives, from different political parties, appointed by the speaker of the house;
 - (b) two members from the senate, from different political parties, appointed by the senate committee on committees; and
 - (c) the following members appointed by the governor:
 - (i) one representative of small businesses in Montana;
 - (ii) one representative of larger businesses in Montana;
 - (iii) one representative of Montana accountants; and
 - (iv) one member from the state executive branch of government.
- (2) The names of the committee members must be certified to the department of administration by July 1, 2001.
- (3) (a) The members of the committee shall select a presiding officer and may appoint other officers as necessary.

- (b) The committee may adopt rules of procedure for conducting meetings.

(c) The presiding officer of the committee shall schedule meetings and direct the staff of the department of revenue to give notice of the time and place of meetings to the committee members and to the public.

(4) (a) The purpose of the committee is to conduct a study of the reporting and taxation of income that is flowing through pass-through entities and the method of reporting and taxation of this income in states other than Montana and to consider recommendations concerning the methodology the state of Montana should use to ensure fair and equitable taxation of income that pass-through entities flow through to other entities.

(b) (i) The committee shall provide reports to the governor and the leadership of each house of the legislature every 6 months.

(ii) The committee shall submit a written report to the legislature not later than December 1, 2002, that must include recommendations and proposed bill drafts necessary to implement any legislative proposals.

(5) (a) The committee is authorized to request directly from any agency, board, or commission any relevant information, suggestions, estimates, and statistics, and each agency, board, or commission shall furnish requested information to the best of its ability.

(b) The committee is attached to the department of revenue for administrative and staff purposes.

(6) (a) Except as provided in subsection (6)(b), members of the committee must be reimbursed in accordance with 2-18-501 through 2-18-503 for actual and necessary expenses incurred in attending meetings or conducting committee business.

(b) Legislators serving on the committee must be reimbursed and compensated as provided for in 5-2-302 for actual and necessary expenses incurred in attending meetings or conducting committee business.

NEW SECTION. **Section 15. Codification instruction -- code commissioner instruction.** (1) [Sections 3 through 6] are intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [sections 3 through 6].

(2) Sections 15-31-201 and 15-31-203 are intended to be renumbered and codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to sections 15-31-201 and 15-31-203.

(3) Section 15-30-133 is intended to be renumbered and codified in the same part as [sections

3 through 6], 15-31-201, and 15-31-203.

NEW SECTION. **Section 16. Repealer.** Sections 15-31-202 and 15-31-209, MCA, are repealed.

NEW SECTION. **Section 17. Applicability.** [This act] applies to tax years beginning after December 31, 2001.

- END -

FISCAL NOTE

Bill #: HB143

Title: Revise income tax laws for pass-through Entities

Primary Sponsor: Roger Somerville

Status: Introduced

Sponsor signature	Date	Chuck Swysgood, Budget Director	Date
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Fiscal Summary

	<u>FY2002 Difference</u>	<u>FY2003 Difference</u>
Revenue:		
General Fund	\$0	\$1,185,000
Net Impact on General Fund Balance:	\$0	\$1,185,000

<u>Yes</u>	<u>No</u>		<u>Yes</u>	<u>No</u>	
	X	Significant Local Gov. Impact		X	Technical Concerns
	X	Included in the Executive Budget		X	Significant Long-Term Impacts
	X	Dedicated Revenue Form Attached		X	Family Impact Form Attached

Fiscal Analysis

ASSUMPTIONS:

1. This bill applies to tax years beginning after December 31, 2001 (TY2002).
2. This bill would increase revenue from the individual income tax by: 1) statutorily requiring partners, shareholders, managers, and other members of pass-through entities to include their distributive share of income, and furnish copies of federal schedules of those shares of income, when filing Montana individual income tax returns; 2) allowing partnerships and S-corporations the option of filing composite tax returns and paying any tax liability due for those members consenting to be included in the filing; 3) requiring the electing entity to make quarterly estimated tax payments; 4) and requiring pass-through entities that are required to file an informational return to withhold and remit tax on partners or shareholders who are nonresidents, or file a composite return on behalf of the partners or shareholders.

(continued)

- 3.B Based on an analysis conducted by the department's pass-through entities *ad hoc* team, it is estimated that this bill will increase individual income tax revenue \$1.3 million per year.
- 4.T The bill also provides that a resident taxpayer is entitled to a credit against individual income tax for the *pro rata* share of income taxes paid to another state or country by an S-corporation of which the individual is a shareholder. Based on case studies conducted by the department, this credit is estimated to reduce individual income tax revenues by \$115,000 each year.
- 5.T The impacts of this legislation will occur in full in tax year 2002 and in fiscal year 2003.

FISCAL IMPACT:

	<u>FY2002</u> <u>Difference</u>	<u>FY2003</u> <u>Difference</u>
<u>Revenues:</u>		
General Fund (01)	\$0	\$1,185,000
<u>Net Impact to Fund Balance (Revenue minus Expenditure):</u>		
General Fund (01)	\$0	\$1,185,000

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON TAXATION

Call to Order: By **CHAIRMAN BOB STORY**, on January 12, 2001 at
8:00 A.M., in Room 472 Capitol.

ROLL CALL

Members Present:

Rep. Bob Story, Chairman (R)
Rep. Ron Erickson, Vice Chairman (D)
Rep. Roger Somerville, Vice Chairman (R)
Rep. Joan Andersen (R)
Rep. Keith Bales (R)
Rep. Joe Balyeat (R)
Rep. Gary Branae (D)
Rep. Eileen Carney (D)
Rep. Larry Cyr (D)
Rep. Rick Dale (R)
Rep. Ronald Devlin (R)
Rep. John Esp (R)
Rep. Gary Forrester (D)
Rep. Verdell Jackson (R)
Rep. Jesse Laslovich (D)
Rep. Trudi Schmidt (D)
Rep. Butch Waddill (R)
Rep. Karl Waitschies (R)
Rep. David Wanzenried (D)

Members Excused: Rep. Daniel Fuchs (R)

Members Absent: None.

Staff Present: Jeff Martin, Legislative Branch
Rhonda Van Meter, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 61, 1/9/2001; HB 143,
1/9/2001; HB 192, 1/9/2001
Executive Action: None.

HEARING ON HB 143

Sponsor: REPRESENTATIVE ROGER SOMERVILLE, HD 78, Kalispell

Proponents: Robert Sands
George Bennett, Montana Bankers Association
Kurt Alme, Department of Revenue
Pat Haffey, Secretary of State's Office
Jim McKeon, Department of Revenue
Mary Whittinghill, Montana Taxpayers Association

Opponents: None.

Opening Statement by Sponsor:

{Tape : 1B}

REPRESENTATIVE SOMERVILLE stated this bill would clarify the income taxation of pass-through entities such as S-corporations, partnerships, and limited liability companies. A pass-through entity is not taxed at the corporation level, but the tax is imposed on each shareholder, partner, manager, or member's share of the income on their individual income tax return. This means a corporation could be taxed at 6% while an individual could be taxed based on individual income, which is 2-11%. In addition, this bill defines Montana source income for residents and non-residents under one of three different methods to file a return and pay any tax due. These methods are: 1) a combination return is filed by the entity and they pay the tax on behalf of all participant non-resident shareholders, partners, managers, or members; 2) a consent agreement is signed by non-residents agreeing to file a Montana individual income tax return and pay any tax due in a timely manner; 3) an entity is required to withhold and remit a tax from a distributive share on income earned by each non-resident. This bill also allows residents a tax credit against their individual income tax and liability for taxes imposed and paid at the S-corporation or small business corporation to another state or county. It also provides a penalty for the failure to file information returns, such as an S-corporation or partnership return within the state. It also requires the Secretary of State to report on any newly established pass-through entities to the Department of Revenue by December 31st of each year. It creates an interim committee to conduct a study on reporting and taxation of income that flows through pass-through entities. This bill is being introduced because pass-through entities are becoming more popular and have steadily increased in the past five years. Montana and multi-state businesses are increasingly conducting business through small business corporations, partnerships, and other alternative

entities such as limited liability companies and limited liability partnerships. Federal information indicates the growth of S-corporations has increase 28% from 1997 to 1998, and other state information indicates S-corporation growth within Montana has increased at a rate of 10% per year. State information also indicates the conversion of C-corporations to S-corporations was up 17% from 1998 to 1999. The Department of Revenue records show 8306 partnership returns were filed in 1994 and 10,389 in 1998. This is an increase of 25%. The Secretary of State reported approximately 5500 limited liability companies registered in 1999. Partnerships in S-corporation tax return information that must be submitted to the Department of Revenue is limited, and compliance with Montana tax laws by non-residents is lacking. A recent compliance project was conducted by the Department of Revenue resulting in additional revenues of about \$634,000 from non-resident S-corporation shareholders and another \$214,000 from non-resident partnerships not filing a Montana individual income tax. The total is approximately \$850,000 we are currently losing per year. By revising the income taxation of these pass-through entities defining the various types and requiring them to file a composite return, withholding from distributive shares, or requiring a shareholder to file a consent form, the tax gap created by non-voluntary compliance and by non-residents should be reduced. **EXHIBIT(tah09a01)** The handout is proposed amendments to clean up the language even more. On the fiscal note there is a projected increase of income to the state in FY2003 of \$1,185,000. On the back of the fiscal note is explanation of how these figures were derived. There is a section of the bill stating if a resident is paying pass-through entity taxes to another state, this will be deducted from their Montana income tax. This is in subparagraph 4 and also provides a resident taxpayer is entitled to a credit against individual income tax for the share of income taxes paid to another state or country by the S-corporation of which the individual is a shareholder. Based on case studies conducted by the Department of Revenue, this credit is estimated to reduce the individual income tax revenue by \$115,000 each year.

Kurt Alme, Director, Department of Revenue, added additional introduction and explanation of the bill. He said the primary purpose of this bill is to address how they get reporting and compliance from out-of-state residents who are shareholders, members, or partners in a pass-through entity. They also ask the committee to suggest to an interim committee that they consider pass-through entity issues on a broader scale. A pass-through entity are S-corporations, limited liability companies, and partnerships. They do not pay tax at the entity level but pass through their income deductions to the shareholder or owner level where taxes are paid at the individual level, so there is not a corporate license tax paid on it. Section 1 is merely a

housekeeping provision to eliminate references to subsections. Every time a section gets changed and a new subsection gets added, they have to amend all the cross references, so they are beginning a project to eliminate references to subparagraphs and subsections. Section 2 deals with definition clarification, specifically C-corporation, dividends, Internal Revenue Code, limited liability company, limited liability partnership, Montana source income, non-resident, partner, partnership, pass-through entity, and S-corporation. Section 3 is to make clear that all partners, shareholders, and managers of limited liability companies all need to file a return. Sections 4 and 5 try to make clear how out-of-state residents can file. There is a significant noncompliance problem with out-of-state residents who are members, partners, or shareholders who are not filing returns, and they think the revenue impact to the state is over \$1,000,000 per year. In order to do this, they have provided for three ways they can file. The first option is a composite return, which is a combined individual income tax return filed by all the non-resident owners of an entity. They prorate out their share of the tax liability and pay that based on individual income tax rates. There are 14 states that allow for this filing. If non-resident taxpayers do not want to file a composite return or the entity does not want to file the return for them, then they can file a separate individual income tax return, but if they are going to do that, they need to sign a consent agreement with the state recognizing that they realize they need to file a return. This consent will give information about where they are located and make sure this return is filed. If a taxpayer does not chose either of these methods to file, then the Department of Revenue needs the pass-through entity to withhold. Then the state is guaranteed they will get the revenue if they are not going to comply with either of the two other mechanisms. The consent agreement option is currently used by 5 states, and the withholding is used by 17 states. Section 6 clears up a problem between Montana law and other state law. If a resident pays tax on income in another state, they get a credit for that income tax paid in your resident state so they are not paying on that income twice. If pass-through entities were treated the same, this would not be a problem, but some states do not treat pass-through entities and pass-through, and they still pay tax at the entity level. It is suggested that if you do pay tax at the entity level, the proportionate share of the tax paid attributable to the taxpayer can be treated as a credit against Montana individual income taxes. Section 7 is an addition to clarify no income gain, loss, deduction, expense, or credit may be counted more than once in determining Montana source income. Section 8 sets forth what you have to file with the Department of Revenue and provides a penalty for failing to file. Currently there is no consequence, so it adds a penalty of \$50 multiplied by the number of partners, shareholders, managers, members, or

other owners that exist at close of the tax year. Section 9 is merely housekeeping deleting some subparagraph references. Section 10 includes a definition clarification. Section 11 deals with the Montana tax credit for endowed philanthropy, which says if you are a Montana resident through a pass-through entity to a Montana charity held in endowment, you are entitled to a 50% tax credit of up to \$10,000. They are not impacting that credit. The state does not allow individuals to just give cash to an endowment to qualify for the credit, but they do allow business entities to give cash. The reason for this historically is that charities were concerned if they allowed individuals to make contributions to their endowments directly, they would not make contributions directly to the operation fund of a corporation, so endowments would grow but the charities might go out of business in the short-term. An abuse occurring is people are setting up pass-through entities for the sole purpose of making the tax credit. This is just a clarification that if you are going to have a pass-through entity, it must have a business purpose. Section 12 defines small business corporation. Section 13 requires that new entities file with the Secretary of State's office, who will then provide a list to the Department of Revenue of the pass-through entities so they can be sure they are getting all the proper returns. Section 14 refers to the pass-through entity committee. He will leave this to the committee of how best to handle this whether it is dealt with in this bill or amended out to be left for another bill. The last three sections are housekeeping. In Section 17, the applicability date states this applies to tax years beginning after 12/31/01. The amendments deal with the term "entity disregarded" for Federal income tax purposes as it might be unclear, so they have suggested a subparagraph that defines this term and add more clarity. Amendment 6 adds clarity to the term "amount." Amendment 10 clarifies the endowment section and defining trade of business.

Proponents' Testimony:

Pat Hathy, Deputy for Operations & Business Services, Secretary of State's Office, stated they support this bill and stand ready to help the Department of Revenue in providing the list of entities they need.

George Bennett, Attorney, Montana Banker's Association, said the theory of the S-corporation was that small family owned or closely held corporations which could be business in partnership form should not be penalized by having to pay both the tax on the corporate and shareholder income simply to obtain the protection of incorporating; however, under Federal law until about 5-6 years ago, banks were required to be corporations. They have

been advised by the Certified Public Accountants, and they understand the accountants have not had a chance to look at the bill, so the committee may want to allow them to do this. He sees a conflict between Section 4 and 5, but he would feel more comfortable if the CPA's had a chance to look at this. Senator Alvin Ellis has SB 173, which is a major revision of the Income Tax Act, and he believes this bill contains a lot of these same provisions.

Robert Sands is here as an individual taxpayer and has previously practiced tax law in Minnesota. There is a definition in this bill of a corporation, and he believes the Department of Revenue should be aware there is a possible redundancy, because that provision is already defined. He suggests they either avoid having two definitions or they use precisely the same terminology. He supports the Department in an amendment whereby they do not use the term "disregarded." There has been extensive litigation under the Internal Revenue Code on what entity is recognized as a corporation or an association taxable as a corporation under Section 77-01 of the Internal Revenue Code. These provisions primarily go back to the Internal Revenue Code and those words precisely that define that entity for Federal purposes and should be used by Montana as well. Section 6 is of personal interest, and he personally does not regard it as a change in law and believes that is what Montana law says now. There is also a change in that language which he thinks is not helpful. The verbs in the first two sections used is the verb "is," whereas in the present section it says "shall," and he thinks "shall" is a standard term of legal terminology which means that is the way it is going to be. "Is" is a softer term. Consistency is desirable with the term "shall." Section 15-30-133, 3(b), has a phrase "any tax," which he says is too broad. The only tax applicable here would be the built-in gains tax on S-corporations. 15-31-101 is the existing definition of a small business corporation and is the section he previously said has redundancy. In the definition of Montana source income, by listing them individually could potentially inadvertently omit something.

Mary Whittinghill, Montana Taxpayers Association, said they have offered some amendments to Representative Somerville and the Department of Revenue unaware they were presenting amendments today, and some of their amendments have taken care of some of their concerns. They would like the opportunity to work further in clarifying some of the sections of statute.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

REPRESENTATIVE BALLYEAT asked if this bill is a tax increase or if it was simply putting in writing rules the Department of Revenue has already been going by but wanting to clarify. If it is simply clarifying rules already in place, why does it show a \$1,185,000 positive fiscal note. **Kurt Alme** said this is not a tax increase. This positive revenue comes from out-of-state residents paying the tax they are already obligated to pay that they are currently not paying. Most of the bill is clarifying what the law already is. Sections 4 and 5 talking about how they have to file is new, so they are trying to make sure out-of-state residents actually file and they are able to get them to file. The dollar amount came from an audit program done in 1994-1995 specifically aimed at out-of-state residents who are not complying with our tax law for pass-through entities, and it generated revenue positive to the state of \$1.12 million.

REPRESENTATIVE BALLYEAT suggested they consider combining this corporate tax reform with some other types of tax reductions, because legislators and government would probably support tax reform packages on a whole. He understands Senator Ellis has some of these provisions in his individual income tax package. He asked if they have looked at this consideration. **Kurt Alme** said they would certainly be willing to entertain presenting this bill in any form deemed best by the committee.

REPRESENTATIVE DEVLIN asked what the transition period was and if there would be a promise of these figures exactly. **Kurt Alme** said they have focused on this revenue estimate closely. This does not go into effect until 1/1/02 and for the first six months, they are not expecting any additional revenue, so they are being conservative with that figure. Going forward they have based estimates on audit compliance figures from 1994-1995 and multiplied this by the number of out-of-state non filers that exist now. He cannot promise those dollars exactly, but they have confidence with that number.

(Note: There is no taped documentation of the next series of questions due to microphone malfunction.)

REPRESENTATIVE JACKSON asked a question of **Kurt Alme**.

REPRESENTATIVE SCHMIDT asked a series of questions that **Kurt Alme**, **Don Hoffman**, and **Pat Hathy** responded to.

REPRESENTATIVE ESP asked a question of **Kurt Alme**.

REPRESENTATIVE LASLOVICH asked a question of **Kurt Alme**.

REPRESENTATIVE WAITSCHIES asked a series of questions that Kurt Alme and Jim McKeon responded to.

REPRESENTATIVE SCHMIDT asked a question of Kurt Alme.

REPRESENTATIVE ERICKSON asked a question of Kurt Alme.

Closing by Sponsor:

REPRESENTATIVE SOMERVILLE said this bill is very complicated. There will possibly be a subcommittee appointed and they will work with the Department of Revenue, Robert Sands, Montana Taxpayers Association, Senator Ellis, and others to clean up some of the questions that were raised. He believes this bill is not a tax increase but tax equity and fairness. Taxes should be paid by all and paid equally by all who owe in Montana. He is willing to work with anyone and is working directly with Kurt Alme on this bill.

HEARING ON HB 192

Sponsor: REPRESENTATIVE DOUG MOOD, HD 58, Seeley Lake

Proponents: Harold Blattie, Stillwater County
John Lawrence Ashmore
George Bennett, Montana Bankers Association

Opponents: None.

Opening Statement by Sponsor:

REPRESENTATIVE MOOD said there should be an option for people in Montana to pay by credit card. As we move more toward Internet and electronic means, it only makes sense to have this capability. A survey was done by the Federation of Tax Administrators in 2000 showing 44 states surveyed, and of those 44 states, only 5 do not currently have an option of paying taxes by credit card. There will be discussion about who should pay the credit card fee. Of the 22 states listed, 8 of them the state pays the fee and 16 of them has the taxpayer pay the fee.

Proponents' Testimony:

George Bennett, Montana Bankers Association, said we are moving into the electronic age, and the Secretary of State has a bill in this session to allow electronic signatures and electronic transactions, which is the wave of the future. He thinks the taxpayers should pay the fees.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON TAXATION

Call to Order: By **CHAIRMAN BOB STORY**, on February 13, 2001 at
8:00 A.M., in Room 472 Capitol.

ROLL CALL

Members Present:

Rep. Bob Story, Chairman (R)
Rep. Ron Erickson, Vice Chairman (D)
Rep. Roger Somerville, Vice Chairman (R)
Rep. Joan Andersen (R)
Rep. Keith Bales (R)
Rep. Joe Balyeat (R)
Rep. Gary Branae (D)
Rep. Eileen Carney (D)
Rep. Larry Cyr (D)
Rep. Rick Dale (R)
Rep. Ronald Devlin (R)
Rep. John Esp (R)
Rep. Gary Forrester (D)
Rep. Daniel Fuchs (R)
Rep. Verdell Jackson (R)
Rep. Jesse Laslovich (D)
Rep. Butch Waddill (R)
Rep. Karl Waitschies (R)
Rep. David Wanzenried (D)

Members Excused: Rep. Trudi Schmidt (D)

Members Absent: None.

Staff Present: Jeff Martin, Legislative Branch
Rhonda Van Meter, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 240, 2/8/2001; SB 133,
2/8/2001
Executive Action: SB 133; HB 143; HB 247

Opening Statement by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 14.7}

SEN. JERGESON said this is a housekeeping bill requested by the Department of Administration. It changes the names of several funds to conform to terminology according to GAAP. It does not change the function of any of the funds.

Proponents' Testimony:

{Tape : 1; Side : B; Approx. Time Counter : 18.9}

Cathy Muri, Administrator of Accounting & Management Support Division, Department of Administration, read her written testimony. EXHIBIT(tah36a03)

Questions from Committee Members and Responses:

{Tape : 1; Side : B; Approx. Time Counter : 22.6}

REP. STORY asked why the coal producers license tax is included in the bill, as the Supreme Court threw out the coal license tax and the redistribution of the money in the trust fund. SEN. JERGESON said for this bill they are just changing those names to relate to GAAP. It is not the purpose of this bill to clean up the statutes to conform to the Supreme Court ruling.

Closing by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 25.4}

SEN. JERGESON said this is a bill that we need to pass.

EXECUTIVE ACTION ON SB 133

Motion/Vote: REP. LASLOVICH moved that SB 133 BE CONCURRED IN. Motion carried 19-1 with Somerville voting no. REP. CYR will carry the bill.

EXECUTIVE ACTION ON HB 143

Motion: REP. SOMERVILLE moved that HB 143 DO PASS.

Discussion: EXHIBIT(tah36a04) REP. SOMERVILLE said this bill will revise and clean up some of the language in our pass-through

entities. There are 46 amendments to the bill.

EXHIBIT(tah36a05) They wanted to clean up the language regarding pass-through entities to eliminate some of the loop holes. **REP. STORY** said they want to try to track people who are members of limited liability and pass-through entities to make sure they are paying their taxes.

Motion: **REP. SOMERVILLE** moved that **AMENDMENTS DO PASS.**

Discussion: **Don Hoffman, Department of Revenue**, said this bill is the first step in clearing up the law in Montana with respect to pass-through entities who have out-of-state shareholders and partners. He explained the amendments in detail. **REP. BALLYEAT** said this is a major change with this bill. This is not the same as withholding it from employees' paychecks. In many cases, these partners and S-corporations never give paychecks to the partners or shareholders. The income that is reported on the tax return is many times not real dollars and really not any money there to pay the withholding that would be required. There could be a case where partnerships and S-corporations have to come up with money to pay this withholding. Even the people drafting this language say this is just a first step and they want to look at it for two more years, and they might have further changes in two years during the next session. There may be a loophole here, but he believes we should look at it for two more years and make sure they get it right the first time. **REP. SOMERVILLE** said there has been a tremendous increase in the use of limited liability partnerships and corporations in order to avoid paying taxes or pay a lower tax rate. The Department of Revenue is trying to clean up the language so we are collecting all of the funds for Montana that are due. It is the 2003 tax year that this becomes effective, and built into this is an education period that will start with the CPA's to make sure everyone is informed of what is required. **REP. CARNEY** said the withholding is the third step if they do not comply with the first two steps. She has investments that she does not get any money from, but she has to pay taxes on them anyway. Most of the people are wealthy and should not get a free ride when she has to pay taxes on hers. **REP. BALLYEAT** said he is not saying they should not have to pay the tax. The partnership or corporation does not owe the tax. By law they are just a pass-through entity, and the partner or shareholder is supposed to be paying the tax. He wonders if there are other avenues to still ensure partners and shareholders who are not residents of Montana pay their taxes without putting the responsibility on the business entities that may or may not have the money to pay. **REP. JACKSON** gave an example of a limited liability he is involved in and asked if with this bill there will have to be withholdings for Montana for this company in Colorado. **Don Hoffman** said he does not know Colorado law. Based

on information they have, Colorado does have a withholding provision. Colorado also allows for a deposit return like they are asking for. In order for this to have impact on the representative, that partnership would have to have activity in Montana, which it would not in that particular instance. If you do not elect as a partner or shareholder to do the composite return or consent order, then the withholding is applied as an estimated tax. There are 10 other states that do have some withholding requirement for these same type of entities. **REP. JACKSON** asked if he would have to pay penalty and interest if he waited until the end of the year to pay the tax. **Don Hoffman** said yes. **REP. BALES** gave an example of a mineral trust with owners in two states and asked how that would be handled under this bill. **Don Hoffman** said it would not impact trusts. **REP. BALYEAT** asked why is the agreement to file a tax return needed as stated in Section 6. **Don Hoffman** said it is a jurisdiction question. By them filing the consent agreement, they have acknowledge Montana now has jurisdiction. Otherwise, they are trying to collect the tax from someone where there is a question whether they have jurisdiction. **REP. BALYEAT** said there are people in Montana that our outside the jurisdiction, but that did not stop the state from assessing the tax and going after the collection and asked why it is different here. **Don Hoffman** said they are trying to deal with the non-residents, and they have a jurisdiction issue when it comes to these people and possibly getting a judgement against them. The consent establishes this jurisdiction. **REP. BALYEAT** asked if they have the authority to assess the tax anyway even if they do not file the consent. **Brenda Gilmer, Department of Revenue**, said there is a distinction with jurisdiction historically with the partnerships and corporations. With pass-through entities, there has not been a corresponding development with jurisdiction. The states have dealt with this issue by requiring a consent. **REP. FORRESTER** asked if the money on the fiscal note is included in the governor's budget. **REP. SOMERVILLE** said he did not know. He thinks it has to pass this committee before it would be included in the status sheets. **REP. FORRESTER** asked if this is considered a tax increase. **REP. SOMERVILLE** said for the people who are living out of state that have been avoiding paying Montana taxes, it probably is a tax increase. **REP. ERICKSON** asked how confident the sponsor is that the amount of money on the fiscal note will be collected. **REP. SOMERVILLE** said the \$1.3 million is an estimate of collection by creating a system to bring some people into compliance. **REP. ERICKSON** asked if there were figures that showed why \$1.3 million. **Don Hoffman** said the \$1.3 million in additional revenue is based on a project they did where partnerships and S-corporation returns filed in 1994-95 were reviewed. They pursued the filing of returns from non-resident

shareholders and partners. That project collected \$849,000, and based on the growth they have seen in these type of entities, they believe \$1.3 million can be collected. **REP. BALYEAT** asked what the increase was in S-corporations. **Don Hoffman** said there was a 62% increase in S-corporations between 1994 and 1999. **REP. BALYEAT** asked if that is based on national statistics. **Don Hoffman** said he would have to go back and check. He believes it was based on Montana. **REP. BALYEAT** said if it was national statistics, he would argue that the increase in Montana was not near as big. **Don Hoffman** said they have seen a significant increase in the number of S-corporations over the last 10 years.

Motion/Vote: **REP. SOMERVILLE** moved that **AMENDMENTS DO PASS**.
Motion carried unanimously.

Motion: **REP. SOMERVILLE** moved that **HB 143 DO PASS AS AMENDED**.

Motion: **REP. BALYEAT** moved that **AMENDMENT DO PASS**.
EXHIBIT(tah36a06)

Discussion: **REP. BALYEAT** said he wants to strike the section in the bill that deals with shutting down the ability for people to form a partnership or S-corporation strictly to make a charitable endowment contribution. Most of the bill is housekeeping and cleaning up language, but he sees this section as clearly dealing with the charitable endowment credit, and this is clearly a tax increase. This section is unnecessary in this bill. **REP. SOMERVILLE** said he opposes the amendment. When the charitable endowment credit was established, it was set up with the intent to allow individuals or corporations to do a charitable endowment to local community organizations, universities, schools, etc. The intent was not to create a rush into limited liability partnerships or corporations. **REP. BALYEAT** asked if this committee amends the charitable endowment by only allowing half of the contribution, this would eliminate the practice of forming LLC's and S-corporations simply to take the credit. **REP. SOMERVILLE** said he has a good point. He has never worked with anyone that has formed an LLC just to do a charitable contribution. They still might give it because they want a tax credit. **REP. BALYEAT** asked if the charitable endowment credit is amended so the credit given to S-corporations, partnerships, and LLC's is only half of the credit given individuals, would it be agreed that the practice of forming LLC's and S-corporations simply to get the credit would virtually disappear. **Don Hoffman** said he has not thought about that. **Brenda Gilmer** said the reason for forming LLC's and partnerships is not based on the amount of the credit, it is to avoid the requirement of making a planned gift. **REP. BALYEAT** said he has had clients who have

formed LLC's or corporations simply to make a charitable endowment gift so they did not have to do a planned gift, but he is convinced none of them would have done it if they had only gotten half of the credit given by making a planned gift at the individual level, because there are costs associated with forming an LLC or corporation. This section of the bill is unnecessary. **Jeff Martin** said the committee has already approved an amendment to this section dealing with the change in what an S-corporation is.

Motion/Vote: **REP. BALLYEAT** moved that **AMENDMENT DO PASS**. Motion failed 8-12 with **Bales, Balyeat, Forrester, Fuchs, Jackson, Story, Waddill, and Waitschies** voting aye.

Motion: **REP. SOMERVILLE** moved that **HB 143 DO PASS AS AMENDED**.

Discussion: **REP. BALLYEAT** said he is going to oppose this bill because it includes a tax increase. It is also putting increasing complexities onto businesses in Montana. There are other ways they could collect this tax. **REP. DEVLIN** said this bill focuses primarily on non-resident members of a pass-through entity. They will be notified they have to file a Montana income tax return. They are not being asked to do anything residents of Montana are being asked to do. **REP. STORY** said if there is any tax increase in this bill it has to do with the elimination of the credit for certain people. Going after people who are required to pay taxes is not a tax increases.

Motion/Vote: **REP. SOMERVILLE** moved that **HB 143 DO PASS AS AMENDED**. Motion carried 15-5 with **Balyeat, Forrester, Fuchs, Jackson, and Wanzenried** voting no.

EXECUTIVE ACTION ON HB 247

{Tape : 3; Side : A; Approx. Time Counter : 8.8}

Motion: **REP. WANZENRIED** moved that **HB 247 DO PASS**.

Discussion: **REP. ERICKSON** said this bill is clearly a fairness issue. The truckers made a decision a couple of years ago to keep it at a 6% rate. This is an impact on the general fund balance of \$661,000, which is less we can spend on education. **REP. DALE** said the trucking industry has a high level of taxes and fees beyond what normal businesses pay. There are many independents in this business who have to carry the burden of these costs. **REP. WANZENRIED** said one of the points made during the hearing is that this is a very mobile industry. There is a cost if we do this, but large companies will take their trucks to

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON TAXATION

Call to Order: By VICE CHAIRMAN ALVIN ELLIS JR., on March 7,
2001 at 8:00 A.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. Bob DePratu, Chairman (R)
Sen. Alvin Ellis Jr., Vice Chairman (R)
Sen. John C. Bohlinger (R)
Sen. Mack Cole (R)
Sen. Pete Ekegren (R)
Sen. Jon Ellingson (D)
Sen. Bill Glaser (R)
Sen. Dan Harrington (D)
Sen. Emily Stonington (D)

Members Excused: None.

Members Absent: None.

Staff Present: Lee Heiman, Legislative Branch
Deb Thompson, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: House Bill 486, 2/22/2001;
House Bill 143, 3/2/2001
Executive Action: House Bill 143 9-0; Senate
Bill 486 as amended 9-0
Senate Bill 374 Discussed

HEARING ON HOUSE BILL 143

Sponsor: REP. ROGER SOMERVILLE, HD 78, KALISPELL

Proponents: Kurt Alme, Department of Revenue; George Bennett,
Montana Banker's Association

Opponents: None

Opening Statement by Sponsor: REP. SOMERVILLE presented the bill. He distributed written testimony. EXHIBIT(tas52a01) The bill addressed problems with pass through entities, such as S corporations, partnerships and limited liability companies regarding reporting and taxation of income. Essentially, from the increase of these types of businesses being formed, non resident partners have not been filing a Montana individual income tax return. A composite return withholding distributive shares, a consent form required of the shareholder or an estimated tax withheld from the nonresident's share of Montana source income reported on the entities information return, will be required. He distributed composite return data, showing increase growth from 1995. EXHIBIT(tas52a02) This bill will help insure that non resident partners in these pass through entities are paying Montana income tax. {Tape : 1; Side : A; Approx. Time Counter : 0 - 10.1}

Proponents' Testimony: Kurt Alme, Director of the Department of Revenue, spoke in support of the bill. He described the hard work of the subcommittee that worked on this issue. Those included REP. SOMERVILLE, House Tax Committee with contributions by the Society of CPA's, Banker's Association and Montana Taxpayer's Association. This bill deals with a host of issues related to pass through entities. The key provision deals with non resident compliance which is a problem getting them to pay their fair share of tax. There are two issues, the first is the ability by the Department of Revenue to assert jurisdiction over people outside the state of Montana. The second issue is trying to catch that money before it leaves the state because it is expensive to track folks down to pay. This is simple tax fairness. The resident taxpayers are paying their share but the non resident taxpayers are not. {Tape : 1; Side : A; Approx. Time Counter : 10.1 - 12.9}

George Bennett, Attorney for the Montana Banker's Association, spoke as a proponent. He noted that banks are now allowed to create a Sub S corporation. Congress finally allowed banks to take this election. The Sub S theory, if you have a small family owned business, whether a bank or other business, to operate as a partnership they should not be penalized with double taxes that are on corporations. The problem then became, if you elect for federal purposes to be a Sub S and have been using the bad debt reserve, in order to recapture that reserve as income. The state of Montana has never allowed a bad debt reserve, you had to take actual bad debts. One of the problems between the banking industry and the department over whether that was state income or not - this bill resolves that. The shareholders of that

corporation should be allowed to take an allocate portion of the tax credit for taxes paid to another state. This bill now takes care of those two problems. He supported the bill. *{Tape : 1; Side : A; Approx. Time Counter : 12.9 - 15.4}*

Opponents' Testimony: None

Questions from Committee Members and Responses: SENATOR BOHLINGER asked how many taxpayers were not in compliance. Mr. Alme replied that a compliance effort by the department in 1998 discovered approximately \$850 thousand dollars of compliance revenue was found. This effort would not have found all the compliance revenue that was outstanding. If you take the \$850 thousand dollars and divide by the number of pass through entities that existed in 1998 and extrapolate that forward to the numbers of pass through entities we have in 2001 you get \$1.85 million annually.

SENATOR ELLINGSON noted if this \$1.85 million were collected with the passage of this bill, what would be the prospects of back tax collections. Mr. Alme replied the bill would have insignificant impact on back taxes. The crux is in education and having composite returns filed prospectively without additional compliance work by the department. *{Tape : 1; Side : A; Approx. Time Counter : 15.4 - 20}*

SENATOR STONINGTON asked for clarification on the registration. Mr. Alme replied that the only way to track pass through entities was through the Secretary of State's Office which only had names and social security numbers, not addresses. Once the department got the information, enforcement was still a problem. The bill will provide two options. One is called a consent agreement, acknowledging their shareholders have a tax obligation to pay and waive their objection for jurisdiction of the state of Montana. A composite return is the other option. This way it is taken care of at the partnership level, the S Corporation level, and the individuals don't have to bother. The department is trying to be flexible and break into this process and not be punitive and thereby assume there is an education effort. That is why the consent agreement is in there to educate out of state or non resident shareholders and partners. In two years, if there is still a compliance problem, this can be revisited. In waiving their personal jurisdiction, it will put the shareholders on notice they have an obligation to file. The hammer is, if they don't do either one, we will require the entity to withhold that individual at the top income tax rate. That is the tool used to get them to do one of the other choices. There will still be a problem of enforcement, although the barrier of jurisdiction will be removed. *{Tape : 1; Side : A; Approx. Time Counter : 20 - 25}*

Closing by Sponsor: REP. SOMERVILLE closed. He noted the effective date was January 1, 2003. The concern is in letting people know about the process. {Tape : 1; Side : A; Approx. Time Counter : 25 - 29.5}

HEARING ON SENATE BILL 486

Sponsor: SENATOR BOB DEPRATU, SD 40, WHITEFISH

Proponents: Aidan Myhre, Montana Chamber of Commerce

Opponents: None

Opening Statement by Sponsor: SENATOR DEPRATU presented the bill. He explained the bill deals with people who have been involved with successful companies and may want to move to Montana, bringing their stock options and cash in to start a new company. We see this happening in Bozeman already. This would allow them to transfer their stock into the new company, or sell it and within one hundred and eighty days either invest in that new company or help an existing company expand. This investment would have to create five new jobs in one form or another. Either an existing company would have to be able to add five jobs or a new company would create five new jobs. The jobs would have to pay a livable wage and the company would have to continue for at least 18 months to hold on to this credit. If the company maintains existence for five years and maintain the employment of the five employees, that is when they can dispose of that stock and have a real tax savings. He distributed amendments that would change the bill from 150% of livable wage to 175%. Using the figures from the Department of Revenue it would give a wage per hour of \$9.71. EXHIBIT(tas52a03)

Proponents' Testimony: Aidan Myhre, representing the Montana Chamber of Commerce, said she thought this was a good bill. Access to capital is one of the greatest concerns of businesses in Montana.

Opponents' Testimony: None

Questions from Committee Members and Responses: SENATOR COLE asked if there was any indication as to use of the program. SENATOR DEPRATU said he kept hearing about shortage of capital in the state as one of the main problems encountered when considering any economic development. The idea was formed when a Cisco employee had commented about leaving the company and

building a business in Montana. There are people out there who would like to move some of their money here. The bill requires them to have their tax revenues here. We need higher income tax earners here in Montana. *{Tape : 1; Side : B; Approx. Time Counter : 7 - 9}*

SENATOR ELLINGSON asked if this would cover someone selling common stocks that may have capital gains and be able to transfer the proceeds of the stock into such an endeavor. SENATOR DEPRATU replied that the bill was that broad based, if they would actually create the five jobs. The purpose is to build a viable company that will actually create jobs.

SENATOR STONINGTON said she liked the idea. This was a beneficial concept for the economy that doesn't compete with existing businesses. It provides incentives for good paying jobs.

Closing by Sponsor: SENATOR DEPRATU closed. He urged a do pass. *{Tape : 1; Side : B; Approx. Time Counter : 9 - 11.4}*

EXECUTIVE ACTION ON HOUSE BILL 143

SENATOR STONINGTON MOVED DO CONCUR ON HB 143. She clarified that the withholding from the highest taxable rate would not apply until 2003. However, compliance with either filing composite returns or informational returns would take place in the next year, 2002. The reason for that was to give them a year for the educational purposes.

The question was called. The motion PASSED unanimously. SENATOR COLE will carry the bill.

EXECUTIVE ACTION ON SENATE BILL 486

SENATOR BOHLINGER MOVED DO PASS SB 486. SENATOR EKEGREN asked if a livable wage had been determined. SENATOR DEPRATU said the Department of Revenue has defined the amount of money that would take, also defined by the federal government, for two people to live in Montana. That came out \$11,700 dollars a year. That seems a little tight. The 150% was too low. The 175% was more tolerable which is \$9.71 an hour. The reason for not setting a specific dollar amount is that this figure changes annually. This would allow it to grow without having to come into the statutes to change it. There is a difference between very rural and metro but that mechanism would not be practical. *{Tape : 1; Side : B; Approx. Time Counter : 11.4 - 17.7}*